

COMMISSIONERS PROCEEDINGS
WEDNESDAY, APRIL 5, 2006
CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Stuart, Morris, and Boldt, Chair, present.

PUBLIC MEETING: HOCKINSON TOWER SITE – PO1632-D; CUP2005-00006; PSR2005-00046; SEP2005-00107; EVR2005-00068

Held a public meeting to consider an appeal of the Clark County Land Use Hearings Examiner's decision regarding the application for a conditional use permit and a site plan review to construct a telecommunications facility consisting of a 150' monopole, associated antennas, base equipment, generator, and 100 gallon propane tank on a fenced 1,600 square foot leased area of a 0.55 acre parcel in the RC-1 zoning district.

The Board of Commissioners did not receive any public comment, oral or written, at this Public Meeting.

The board certified reading the record.

Boldt noted that the appeal had mentioned locating on the water tower and that wasn't brought up in the appeal before the examiner—was that correct?

Rich Lowry, Prosecuting Attorney's Office, said no.

Boldt referenced the original neighborhood meeting when the tower was noted at being 120 feet and now its 150 feet. He said per code, the neighborhood meeting needs to have the design. He asked for clarification.

Lowry said that signification changes in location or design could result in a conclusion that an additional neighborhood meeting be organized. The examiner in his findings concluded that the changes were not so significant as to require a new meeting and that the 18-month delay between the neighborhood meeting and the hearing, under the circumstances, 18 months is not unreasonable. The issue before the board is whether or not the examiner abused his discretion—committed an error of law—in concluding that there was not the necessity for an additional neighborhood meeting. Also, the hearing examiner in reaching his conclusions relied upon the provision in the code that indicated the sole purpose of the neighborhood meeting is to exchange information on the siting and design, and took that language to mean that it was a relatively informal kind of a process and the specific information would be contained in the application and available for discussion at the public hearing.

Stuart stated that the code didn't seem to indicate that the timing of those meetings, other than they needed to occur before the submission of the application—there's no limitation as far as how far ahead of time it would need to be.

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Lowry said there is not a code prescription. The issue is given the changes in design and the length of time, did the examiner commit legal error in concluding that it was reasonable code compliance.

Morris explained the public meeting process.

Lowry said in terms of error the hearings examiner's factual findings, the board is limited to determining whether or not there is substantial evidence in the record to support his findings. If there is, the board is precluded from overturning his findings even though the board may have reached different findings from a review of all the evidence. *Lowry* indicated that this is the board's first appeal under the new process enacted a few months previously. Under the process, there are very specific timelines for the appellant to submit an initial brief; for respondents comments to that brief; and for the appellant, who has the burden of proof, to then submit a final responding brief. He said this case illustrates that we need to put those timelines in very bold print. He said there were a lot of submissions on both sides of the issue that were very late and as indicated in the staff report, he would advise that those late submissions cannot be considered by the board. They were included in the packet because they are part of the record and it's important that the board be aware that they exist, but also realize that they're late and can't be considered.

Morris pointed out that she is the only remaining commissioner from when they adopted the cell tower ordinance and at the time of the hearing the neighbors raised the issue of adequate investigation of other sites. That was the original recommendation from staff that the application be denied because the applicants had not proven up their responsibility under the code that other alternate sites were preferable or serviceable. In this particular instance, Exhibit 26, is relatively clear in discussion about the appropriateness and workability of the other sites that had been investigated. She said she thought that clearly documented the hearings examiner's finding of fact on that particular issue. She said that for the discussion about which zones were most appropriate for placing cell towers, the most appropriate zones are the ones where nobody lives. She further explained. *Morris* said she couldn't find a reason to overturn the hearings examiner.

Stuart said he came to a similar conclusion. He said that with regard to the meeting requirement, he couldn't find anything within the code that was clear about the timing and it's a pretty loose requirement as far as the neighborhood meeting goes. He said he couldn't find anything to overturn the finding of facts by the hearings examiner as far as the meeting. As far as the alternative locations, he agreed with Commissioner *Morris* that it appeared an analysis was done. He said in this circumstance work was done to figure out if one of the higher priority areas could be used and he didn't see anything specifically challenging each one of the factual findings of the alternate locations. He said he didn't find enough to overturn the hearings examiner.

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Lowry said his reading of the appeal was that what they have in the appeal is a suggestion that there is a higher priority alternative location, but the difficulty is that the information wasn't presented to the examiner. There was also a late submission from the applicant indicating that if it were before the examiner, it wouldn't work anything. He said it's a mess because they've got new evidence the board can't consider, and rebuttal evidence from the applicant they can't consider.

Stuart said they can only deal with the facts that are in front of them contained within the record. He said that given the limited aspect of their authority, he could find no evidence to overturn.

Boldt agreed with Commissioners Morris and Stuart. He said the only problem he had was with regard to the design of the neighborhood meeting and he hoped that from now on when a neighborhood or cell tower organization at least provides a range for the tower height. He said he also didn't think there was enough to overturn the hearings examiner.

Stuart said he would love to address the issue of the neighborhood meeting in another forum as a legislative body.

There being no further comment, **MOVED** by Stuart to uphold the Hearings Examiner's decision in the Hockinson Tower Site. Commissioners Boldt, Stuart, and Morris voted aye. Motion carried. (See Tape 263)

Morris asked if it would be better to have a separate tab in their notebooks titled "late submissions."

Lowry said he thought so. He said they could figure out a way to make one of the exhibits specifically indicate late submissions.

Morris said that would be very helpful.

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BOARD OF COUNTY COMMISSIONERS

Marc Boldt/s/
Marc Boldt, Chair

Steve Stuart, Commissioner

Betty Sue Morris/s/
Betty Sue Morris, Commissioner

ATTEST:

Louise Richards/s/
Clerk of the Board

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